

newal or extension), is three years or longer.

(B) Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(b) **SUBSTANTIAL TERMINATION LIABILITY.**—For the purposes of this chapter, the United States shall be considered to have a substantial termination liability under a contract—

(1) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel, aircraft, or combat vehicle under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(2) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(A) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(B) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel, aircraft, or combat vehicle involved.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1825(a), (f), Jan. 1, 2021, 134 Stat. 4206, 4207.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 168 of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(A), is classified to section 168 of Title 26, Internal Revenue Code.

##### CODIFICATION

The text of subsec. (d) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1825(f), was based on Pub. L. 98–94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 100–26, § 7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 109–163, div. A, title VIII, § 815(a)(1), Jan. 6, 2006, 119 Stat. 3381.

##### AMENDMENTS

2021—Pub. L. 116–283, § 1825(f)(1), transferred subsec. (d) of section 2401 of this title to this section, struck out subsec. (d) designation at beginning, and redesignated pars. (1) and (2) of such former subsec. (d) as subssecs. (a) and (b), respectively.

Subsec. (a). Pub. L. 116–283, § 1825(f)(2)(A), (C), (D), (E), after redesignation of section 2401(d)(1) of this title as subsec. (a) of this section, inserted subsec. heading, redesignated subpar. (A)(i) and (ii) and its concluding provisions as par. (1)(A)(i) and (ii) and (B), respectively, redesignated subpar. (B)(i) and (ii) and its concluding provisions as par. (2)(A)(i) and (ii) and (B), respectively, and inserted par. headings.

Subsec. (a)(1)(A). Pub. L. 116–283, § 1825(f)(2)(A), (B), substituted “In this chapter” for “In this section” and “paragraph (2)” for “subparagraph (B)” in introductory provisions.

Subsec. (b). Pub. L. 116–283, § 1825(f)(3), after redesignation of section 2401(d)(2) of this title as subsec. (b) of this section, inserted heading, substituted “this chapter” for “this section” in introductory provisions, and redesignated subpar. (A) as par. (1) and subpar. (B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), respectively.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

#### § 3675. Capital lease or lease-purchase treated as an acquisition

(a) **IN GENERAL.**—If a lease or charter covered by this chapter is a capital lease or a lease-purchase—

(1) the lease or charter shall be treated as an acquisition and shall be subject to all applicable statutory and regulatory requirements for the acquisition of aircraft, naval vessels, or combat vehicles; and

(2) funds appropriated to the Department of Defense for operation and maintenance may not be obligated or expended for the lease or charter.

(b) **DEFINITIONS.**—In this section, the terms “capital lease” and “lease-purchase” have the meanings given those terms in Appendix B to Office of Management and Budget Circular A–11, as in effect on January 6, 2006.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1825(a), (g), Jan. 1, 2021, 134 Stat. 4206, 4208.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (f) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1825(g), was based on Pub. L. 109–163, div. A, title VIII, § 815(c)(2), Jan. 6, 2006, 119 Stat. 3382; Pub. L. 111–84, div. A, title X, § 1073(a)(24), Oct. 28, 2009, 123 Stat. 2473.

##### AMENDMENTS

2021—Pub. L. 116–283, § 1825(g)(1)(A), transferred subsec. (f) of section 2401 of this title to this section, struck out subsec. (f) designation at beginning, and redesignated pars. (1) and (2) of such former subsec. (f) as subssecs. (a) and (b), respectively.

Subsec. (a). Pub. L. 116–283, § 1825(g)(2), after redesignation of section 2401(f)(1) of this title as subsec. (a) of this section, inserted heading, substituted “this chapter” for “this section” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, § 1825(g)(3), after redesignation of section 2401(d)(2) of this title as subsec. (b) of this section, inserted heading and substituted “In this section” for “In this subsection”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed im-

plementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

#### § 3676. Guidelines

The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft, naval vessels, and combat vehicles rather than directly procuring such aircraft, vessels, and combat vehicles.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1825(a), (h), Jan. 1, 2021, 134 Stat. 4206, 4208.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (g) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1825(h), was based on Pub. L. 98-94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 98-525, title XII, § 1232(a)(2), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 109-163, div. A, title VIII, § 815(c)(1), Jan. 6, 2006, 119 Stat. 3382.

##### AMENDMENTS

2021—Pub. L. 116-283, § 1825(h), transferred subsec. (g) of section 2401 of this title to this section and struck out subsec. (g) designation at beginning.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

#### § 3677. Contracts for lease or use of vessels for a term of greater than two years but less than five years: prior notice to congressional committees

The Secretary of a military department may make a contract for the lease of a vessel or for the provision of a service through use by a contractor of a vessel, the term of which is for a period of greater than two years, but less than five years, only if—

(1) the Secretary has notified the congressional defense committees of the proposed contract and included in such notification—

(A) a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than obtaining the capability provided for by the lease, charter, or services involved through purchase of the vessel;

(B) a determination that entering into the proposed contract as a means of obtaining the vessel is the most cost-effective means of obtaining such vessel; and

(C) a plan for meeting the requirement provided by the proposed contract upon completion of the term of the lease contract; and

(2) a period of 60 days has expired following the date on which notice was received by such committees.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1825(a), (i), Jan. 1, 2021, 134 Stat. 4206, 4208.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (h) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1825(i), was based on Pub. L. 110-181, div. A, title X, § 1011, Jan. 28, 2008, 122 Stat. 303; Pub. L. 112-239, div. A, title VIII, § 821, title X, § 1076(f)(26), Jan. 2, 2013, 126 Stat. 1830, 1953.

##### AMENDMENTS

2021—Pub. L. 116-283, § 1825(i), transferred subsec. (h) of section 2401 of this title to this section and struck out subsec. (h) designation at beginning.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

#### § 3678. Contracts with terms of 18 months or more: limitation

The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1825(a), (j), Jan. 1, 2021, 134 Stat. 4206, 4208.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (b) of section 2401a of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1825(j), was based on Pub. L. 103-355, title III, § 3065(a)(1), Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104-106, div. A, title VIII, § 807(a)(1)(A), Feb. 10, 1996, 110 Stat. 391.

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101-165, title IX, § 9081, Nov. 21, 1989, 103 Stat. 1147, which was set out as a note under section 2401 of this title, prior to repeal by Pub. L. 103-355, § 3065(b).

##### AMENDMENTS

2021—Pub. L. 116-283, § 1825(j), transferred subsec. (b) of section 2401a of this title to this section and struck out subsec. (b) designation and heading “Limitation on Contracts With Terms of 18 Months or More” at beginning.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed im-

plementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

#### LEASES FOR TANKER AIRCRAFT UNDER MULTIYEAR AIRCRAFT-LEASE PILOT PROGRAM

Pub. L. 107-314, div. A, title I, §133, Dec. 2, 2002, 116 Stat. 2477, provided that: “The Secretary of the Air Force may not enter into a lease for the acquisition of tanker aircraft for the Air Force under section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107-117; 115 Stat. 2284; 10 U.S.C. 2401a note [now 10 U.S.C. 3678 note, set out below]) until—

“(1) the Secretary submits the report specified in subsection (c)(6) of such section; and

“(2) either—

“(A) authorization and appropriation of funds necessary to enter into such lease are provided by law; or

“(B) a new start reprogramming notification for the funds necessary to enter into such lease has been submitted in accordance with established procedures.”

#### MULTI-YEAR AIRCRAFT LEASE PILOT PROGRAM

Pub. L. 107-206, title I, §308, Aug. 2, 2002, 116 Stat. 841, provided that: “During the current fiscal year and hereafter, section 2533a of title 10, United States Code [now 10 U.S.C. 4862], shall not apply to any transaction entered into to acquire or sustain aircraft under the authority of section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107-117; 115 Stat. 2284) [set out below].”

Pub. L. 107-117, div. A, title VIII, §8159, Jan. 10, 2002, 115 Stat. 2284, as amended by Pub. L. 107-248, title VIII, §8117, Oct. 23, 2002, 116 Stat. 1564; Pub. L. 113-76, div. C, title VIII, §8122, Jan. 17, 2014, 128 Stat. 133, provided that:

“(a) The Secretary of the Air Force may, from funds provided in this Act [see Tables for classification] or any future appropriations Act, establish and make payments on a multi-year pilot program for leasing general purpose Boeing 767 aircraft and Boeing 737 aircraft in commercial configuration.

“(b) Sections 2401 [see 10 U.S.C. 3671 et seq.] and 2401a [see 10 U.S.C. 3678, 3681] of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

“(c) Under the aircraft lease Pilot Program authorized by this section:

“(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee, but only those that are not inconsistent with any of the terms and conditions mandated herein. Notwithstanding the provisions of Section [sic] 3324 of Title 31, United States Code, payment for the acquisition of leasehold interests under this section may be made for each annual term up to one year in advance.

“(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years, inclusive of any options to renew or extend the initial lease term.

“(3) The Secretary may provide for special payments in a lessor if the Secretary terminates or cancels the lease prior to the expiration of its term. Such special payments shall not exceed an amount equal to the value of 1 year's lease payment under the lease.

“(4) Subchapter IV of chapter 15 of title 31, United States Code shall apply to the lease transactions under this section, except that the limitation in section 1553(b)(2) shall not apply.

“(5) The Secretary shall lease aircraft under terms and conditions consistent with this section and consistent with the criteria for an operating lease as defined in OMB Circular A-11, as in effect at the time of the lease.

“(6) Lease arrangements authorized by this section may not commence until:

“(A) The Secretary submits a report to the congressional defense committees [Committees on Armed Services of the Senate and the House of Representatives and Subcommittees on Defense of the Committees on Appropriations of the Senate and the House of Representatives] outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and describe the expected savings, if any, comparing total costs, including operation, support, acquisition, and financing, of the lease, including modification, with the outright purchase of the aircraft as modified.

“(B) A period of not less than 30 calendar days has elapsed after submitting the report.

“[(7) Repealed. Pub. L. 113-76, div. C, title VIII, §8122, Jan. 17, 2014, 128 Stat. 133.]

“(8) The Air Force shall accept delivery of the aircraft in a general purpose configuration.

“(9) At the conclusion of the lease term, each aircraft obtained under that lease may be returned to the contractor in the same configuration in which the aircraft was delivered.

“(10) The present value of the total payments over the duration of each lease entered into under this authority shall not exceed 90 percent of the fair market value of the aircraft obtained under that lease.

“(d) No lease entered into under this authority shall provide for—

“(1) the modification of the general purpose aircraft from the commercial configuration, unless and until separate authority for such conversion is enacted and only to the extent budget authority is provided in advance in appropriations Acts for that purpose; or

“(2) the purchase of the aircraft by, or the transfer of ownership to, the Air Force.

“(e) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

“(f) The authority provided under this section may be used to lease not more than a total of 100 Boeing 767 aircraft and 4 Boeing 737 aircraft for the purposes specified herein.

“(g) Notwithstanding any other provision of law, any payments required for a lease entered into under this Section, or any payments made pursuant to subsection (c)(3) above, may be made from appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the lease takes effect; appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the payment is due; or funds appropriated for those payments.”

#### LEASE OF FIREFIGHTING, CRASH RESCUE, AND SNOW REMOVAL EQUIPMENT

Pub. L. 105-262, title VIII, §8126, Oct. 17, 1998, 112 Stat. 2333, provided that:

“(a) The Secretary of the Army and the Secretary of the Air Force may each enter into one or more multiyear leases of nontactical firefighting equipment, nontactical crash rescue equipment, or nontactical snow removal equipment. The period of a lease entered into under this section shall be for any period not in excess of 10 years. Any such lease shall provide that performance under the lease during the second and subsequent years of the contract is contingent upon the appropriation of funds and shall provide for a cancellation payment to be made to the lessor if such appropriations are not made.

“(b) Lease payments made under subsection (a) shall be made from amounts provided in this or future appropriations Acts.

“(c) This section is effective for all fiscal years beginning after September 30, 1998.”